*** THE HON'BLE SRI JUSTICE GODA RAGHURAM**

+ WRIT PETITION No.8778 of 2006

%Dated 14th day of September, 2006

Golconda Educational Society, Hyderabad,
represented by Zafar Zaveed, Chairman cum
correspondent, resident of Hyderabad.

.... PETITIONER

VERSUS

$ The State of Andhra Pradesh rep., by its
Principal Secretary to Government,
Municipal Administration and Urban Development
Department, Secretariat Buildings, Saifabad, Hyderabad
and others.

.....RESPONDENTS

@ **Counsel for Revision Petitioner: Sri P.S.Rajasekhar**

^ **Counsel for Respondents: Learned Advocate General assisting Sri Satya Prasad.**

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> HEAD NOTE:

? Cases referred:

1. (2002) 1 SCC 273

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 8778 OF 2006

DATED: 14.09.2006

Between:

Golconda Educational Society, Hyderabad,
represented by Zafar Zaveed, Chairman cum
correspondent, resident of Hyderabad.

...

PETITIONER

And:

The State of Andhra Pradesh rep., by its
Principal Secretary to Government,
Municipal Administration and Urban Development
Department, Secretariat Buildings, Saifabad, Hyderabad
and others.

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THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.8778 OF 2006

ORAL ORDER:

Heard Sri P.S.Rajasekhar, learned counsel for the petitioner and the learned Advocate General assisting Sri Satya Prasad, advocate for respondents 1 to 4.

The petitioner impeaches the notification No.C/123/2005 dated 21.04.2005 issued in the Gazettee dated 21.04.2005 as ORR No.89 purporting to be a draft notification under Section 4(1) of the Land Acquisition Act, 1894, proposing acquisition of an extent of Acs.1.50 cents of land of the petitioner situate in Sy.No.284, Vatti Nagulapalli Village, Rajendra Nagar Mandal, Ranga Reddy District. Appropriate consequential relief in respect of this grievance is sought in the writ petition apart from invalidation of the notification.

The undisputed factual matrix of the case is: the petitioner is an educational society registered under the provisions of the Telangana Societies Registration Act, established for promoting graduate and post graduation education, in particular, for the benefit and in the interest of the Muslim community. Under its aegis, several educational institutions are engendered and are

managed by the petitioner society. The Hyderabad Presidency Degree College (the College) established in 1989 is an educational institution, managed by the petitioner society. The college is a recognized minority educational institution. The college owns the extent of Acs.1.50 cents in Sy.No.284 at Vatti Nagulapalli village, Rajendra Nagar Mandal, Ranga Reddy District, which is proposed for acquisition by the impugned notification.

The petitioner assails the acquisition notification as in transgression of Article 30(1A) of the Constitution of India, which enjoins; "In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause. "

On behalf of the respondents, the fourth respondent has filed a counter-affidavit. Much of the counter-affidavit expatiates on the merits of the eventual purposes for which the acquisition is resorted to. This is an aspect which is irrelevant for the purpose of adjudicating this lis. The challenge by the petitioner to the acquisition is not directed at the wisdom of the purpose of the acquisition, but on the invalidity of the acquisition in the context of the constitutional injunctions in Article 30(1A).

The provisions of Article 30(1A) were considered by a Constitution Bench of the Supreme Court in ***Society of St. Joseph's College v. Union of India***[1]. The relevant principle and the *ratio decidendi* are spelt out by the Apex Court in paragraphs 5 to 8;

"5. Article 30 is a part of the chapter on Fundamental Rights in the Constitution. It guarantees a right to the minorities, religious and linguistic, to establish and administer educational institutions of their choice. Clause (1A) thereof requires that the State shall, in making a law that provides for the compulsory acquisition of any property of a minority educational institution, ensure that the amount, either fixed or determined under such law, that is payable to the educational institution for the acquisition of its property is such as would not either restrict or abrogate the right aforementioned. Clause (1A), therefore, requires the State, that is to say, Parliament in the case of a Central legislation or a State legislature in the case of State legislation, to make a specific law to provide for the compulsory acquisition of the property of minority educational institutions, the provisions of which law should ensure that the amount payable to the educational institution for the acquisition of its property will not be such as will in any manner impair the functioning of the educational institution.

6. It not is necessary that a statute should be enacted exclusively for the compulsory acquisition of the property of minority educational institutions, but it is necessary that in a law that provides, in general, for the compulsory acquisition of property, there should be enacted, by amendment thereof, a provision that relates specifically to the acquisition of the property of minority educational institutions. That provision must ensure that the amount payable for such acquisition will not in any manner impair the right conferred upon the minorities by Article 30.

7. Plainly, Parliament in its constituent capacity apprehended that minority educational institutions could be compelled to close down or curtail their activities by the expedient of acquiring their property and paying them inadequate amounts in exchange. To obviate the violation of the right conferred by Article 30 in this manner, Parliament introduced the safeguard provision in the Constitution, first in Article 31 and then in Article 30.

8. We cannot accept the submission of the learned Attorney General that the provisions of a statute that provides for the acquisition of property in general, as for example, the Land Acquisition Act, are adequate for the compulsory acquisition of the property of minority educational institutions because what is payable thereunder is compensation, or that the provision of clause (1A) of Article 30 should be read into such statute. Clause (1A) clearly states that after the date of its

> introduction there must be a law that specifically relates to the compulsory acquisition of the property of minority educational institutions and that that law must make provisions that ensure that the amounts that are fixed or determined thereunder for the acquisitions are such as do not restrict or abrogate the right guaranteed under Article 30. Necessarily, such law must require the taking into account of factors that do not come into play in the determination of amounts payable in relation to the acquisition of the properties of others and are, therefore, not set out in the general acquisition statutes."
> (emphasis supplied)

In the light of the clear and unambiguous ratio in the judgment in ***Society of St. Joseph's College v. Union of India (supra),*** the impugned acquisition notification ORR No.89 dated 21.04.2005 published in the A.P. Gazette extraordinary of even date to the extent it proposes to acquire the extent of Acs.1.50 cents in Sy.No.284 of VattiNagulapalli village, Rajendra Nagar Mandal, Ranga Reddy District belonging to the Hyderabad Presidency Degree College, a minority educational institution under the administrative control of the petitioner educational society, is unsustainable and is declared void, illegal and unenforceable. The consequent draft declaration under Section 6 of the Act published in the A.P. Gazette extraordinary dated 20.04.2006 as ORR No.51 is also protanto quashed.

The writ petition is allowed as above. No order as to costs.

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14.09.2006

Note: L.R. copy to be marked.

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[1] (2002) 1 SCC 273